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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of:

MICHAEL R. LAYTON, ET AL.

Serial No. 10/633,368

Filed: July 31, 2003

For: SHOCK-RESISTANT ENCLOSURE

Examiner: Amy Jo Sterling
Group Art Unit: 3632
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BRIEF ON APPEAL

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REAL PARTY IN INTEREST

The real party in interest is BEI Technologies, Inc., a Delaware corporation with its principal place of business in San Francisco, California, to whom the application has been assigned. Since the application was filed, the name of the assignee has been changed from BEI Technologies, Inc. To Custom Sensors and Technologies, Inc., and the principal place of business of the assignee is now Monrovia, California.

RELATED APPEALS AND INTERFERENCES

None.

STATUS OF CLAIMS

The application was originally filed with Claims 1 - 29. In response to an election of species requirement, filed September 23, 2005, Claims 30 - 35 were added, and Claims 1 - 3, 5 - 23 and newly added Claims 30 - 35 were elected for examination in the application. In an amendment filed March 28, 2006, Claims 1, 2, 5, 6, 10, 12, 22, and 32 were amended, and Claim 3 was cancelled. After an appeal was taken from a previous final action, the Examiner reopened prosecution under the guise of dealing with two claims she had neglected to include in the final action. At the same time, she cited no less than six new references, abandoned all of the rejections she had made previously, and rejected all of the claims, primarily on the basis of the new references. In an amendment filed October 31, 2007, Claims 10, 19, 20, 24, and 33 were amended in light of the newly cited references. Claims 4, 13, 15, 16 and 26 - 31 have been withdrawn from consideration. Currently, no claims stand allowed, although the Examiner has indicated that Claim 6 would be allowed if rewritten in independent form. Claims 1, 2, 5, 7 - 12, 14, 17 - 25, and 32 - 35 are on appeal.

STATUS OF AMENDMENTS

No amendments have been filed since the appeal was taken.

SUMMARY OF CLAIMED SUBJECT MATTER

The claims on appeal are directed to a shock-resistant enclosure for use in devices with fragile components such as solid state angular rate sensors and the like.

As defined by Claim 1 and illustrated in Figure 1, the shock-resistant enclosure comprises a housing 11 formed of a rigid material to which a fragile element (not shown) is rigidly mounted (Page 3, lines 8 - 13), and a plurality of discrete shock absorbing elements 18, 19, 21, 22, 32, 33 projecting outwardly in different directions from the housing for receiving impacts which would otherwise strike the housing from the outside (Page 3, line 18 to Page 4, line 3; Page 4, line 23 to Page 5, line 4), with at least some of the shock absorbing elements 32, 33 being formed integrally with the housing and of the same rigid material as the housing (Page 5, lines 1 - 4).

As defined by Claim 10 and illustrated in Figures 1 and 2, the shock-resistant enclosure comprises a housing 11 having base and cover sections 12, 13 (Page 1, lines 6 - 8 and lines 14 - 15), and a combined sealing gasket and shock absorbing structure 16 formed integrally of an elastomeric material with a generally planar sealing portion 17 disposed between the base and cover sections 12, 13 of the housing 11 and a plurality of discrete shock absorbing elements 18, 19, 21, 22 extending outwardly from the sealing portion 17, and projecting from different sides of the housing 11 (Page 3, lines 23 - 27), with at least one of the elements 22 projecting from the housing 11 in a direction substantially perpendicular to the plane of the sealing portion 17 (Page 4, lines 1 - 3).

As defined by Claim 19 and illustrated in Figure 1, the shock-resistant housing comprises a housing 11 to which a fragile element (not shown) is rigidly mounted (Page 3, lines 8 - 13), a mounting pad 31 which projects from the housing (Page 4, line 23), and a shock absorbing fender 32 spaced laterally from the mounting pad, with a gap between the fender and the mounting pad, for receiving impacts which would otherwise strike the mounting pad 31 (Page 4, lines 24 - 27; Page 5, lines 13 - 14).

As defined by Claim 24 and illustrated in Figure 1, the shock-resistant housing comprises a housing 11 to which a fragile element (not shown) is rigidly mounted (Page 3, lines 8 - 13), and a plurality of leaf springs 32 formed integrally with and extending outwardly from the housing for receiving impacts that would otherwise strike the housing (Page 4, line 23 to Page 5, line 10).

GROUNDS OF REJECTION

Claims 1, 5, 7 - 9, 19 - 21, 23, and 32 - 35 stand rejected under 35 U.S.C. §102 as being anticipated by Bridges (U.S. 6,498,719).

Claims 10 - 12, 14, 17, and 18 stand rejected under 35 U.S.C. §102 as being anticipated by Berberich et al. (U.S. 5,760,998).¹

Claims 24 and 25 stand rejected under 35 U.S.C. §102 as being anticipated by Lelong et al. (U.S. 2003/0035271).

Claim 2 stands rejected under 35 U.S.C. §103 as being unpatentable over Bridges in view of Berberich et al.

Claim 22 stands rejected under 35 U.S.C. §103 as being unpatentable over Bridges.

¹Although the reference is subsequently referred to as "Ribeiro", applicant assumes that is an error and that the rejection is based upon Berberich et al., as initially stated.

ARGUMENT**Anticipation Rejections****Claims 1, 5, 7 - 9, 19 - 21, 23, and 32 - 35**

Claim 1 defines the invention as a shock-resistant enclosure comprising a housing formed of rigid material to which a fragile element is rigidly mounted, and a plurality of discrete shock absorbing elements projecting outwardly in different directions from the housing for receiving impacts which would otherwise strike the housing from the outside, with at least some of the shock absorbing elements being formed integrally with the housing and of the same rigid material as the housing.

Contrary to the Examiner's suggestion, Bridges does not show a plurality of discrete shock absorbing elements projecting outwardly in different directions from the housing, as specified in Claim 1. The elements identified by the Examiner as shock absorbing elements in Bridges (elements 32, 22, 24)² do not project in different directions. They all extend in the same direction, *i.e.* perpendicular to the bottom wall of the enclosure, and they provide no protection whatsoever from impacts directed toward the top, front, back, or sides of the computer.

Bridges likewise fails to show at least some of the shock absorbing elements being formed integrally with the housing and of the same material as the housing, as also specified in Claim 1. Initially, elements 24 are not really shock absorbing elements for receiving impacts which would otherwise strike the housing. Instead, they are resilient friction pads that are attached to the bottom wall of the computer for limiting sliding of the computer when placed on smooth surfaces and for providing a nominal amount of cushioning when placing the portable computer on a hard surface (Col 3, lines 2 - 6). Moreover, being resilient, they are clearly not made of the same material as the Lexan or polycarbonate enclosure of the computer, characterized by the Examiner as being "rigid".

Moreover, elements 22 and 26 are not separate shock absorbing elements, but rather parts of an assembly referred to by Bridges as a "strike zone" for reducing the adverse effects of flat slap impacts. As a careful reading of the reference will show, element 22 is not a shock absorbing element at all. It is simply a cover for element 26 (Col. 3, lines 14 - 17), and Bridges itself says it can be replaced by an opening in the bottom wall through which element 26 may protrude (Col. 3, lines 35 - 39). Element 26 is part of a sheet metal support member 30 that is attached to the bottom wall by fasteners

² Element 32 is a recess in so-called "protrusion" 26 which is apparently the element the Examiner is referring to as 32 throughout her action. Rather than continuing the error, applicant will refer to protrusion 26 by its correct number in this response and in any further papers in this proceeding.

such as rivets or screws. Thus, neither element 22 nor element 26 is a shock absorbing element that is made of the same material as the housing or enclosure.

Furthermore, contrary to the Examiner's suggestion, there is no fragile element rigidly mounted a housing formed of rigid material in Bridges, as specified by Claim 1. There is no mention of circuit boards or of circuit boards or any other fragile element being rigidly mounted to the enclosure, and there is no basis whatsoever for the Examiner's reference to circuit boards in the computer being rigidly mounted to the housing or enclosure.

Without any of these elements, Bridges does not anticipate, and the rejection is clearly erroneous.

Claims 5, 7 - 9, and 32 - 35 depend from Claim 1 and are directed to patentable subject matter for the same reasons as their parent claim. In addition, they call for additional features which are not found in Bridges.

Claim 5, for example, specifies that some of the shock absorbing elements are tapered and decrease in cross-sectional area away from the housing. There are no such elements in Bridges, and the Examiner's attempt to characterize element 22 as such is ludicrous. As pointed out above, element 22 is not a shock absorbing element at all, but simply a cover for the element (26) which is intended to absorb impacts.

Claim 7 further distinguishes in specifying at least some of the shock absorbing elements extend beyond a mounting surface of the housing and are adapted to deflect so as not to prevent the mounting surface from making direct contact with a surface on which the enclosure is installed. Here again, the Examiner calls element 22 a shock absorbing element when, in fact, it is not. Moreover even if element 22 were a shock absorbing element, it still would not extend beyond a mounting surface of the housing and deflect so as not to prevent the mounting surface from making direct contact with a surface on which the enclosure is installed. In that regard, there appears to be a misunderstanding on the Examiner's part as to what constitutes a mounting surface as that term is used in the claim. It is a surface which contacts another surface on which the enclosure is mounted. The bottom wall 20 of the enclosure in Bridges is not such a surface because it does not contact the desktop or other surface on which the computer is placed. It is spaced above the desktop by pads 24 by a distance h1. Moreover, element 22 does not deflect to permit the bottom wall 20 to make direct contact with the desktop. It protrudes from the bottom wall and would prevent the bottom wall from contacting the desktop if pads 24 were not there.

Claim 8 further distinguishes in calling for a mounting pad which projects from the housing and a shock absorbing fender spaced laterally from the mounting pad, with a gap between the mounting pad and the fender. There are no such elements in Bridges.

Contrary to the Examiner's suggestion, element 26 is not a mounting pad. Nothing is mounted to it, and it does not mount the computer to anything. Likewise, element 22 is not a fender, and it is not spaced laterally from element 26. Moreover, the Examiner cannot rely upon elements 22 and 26 as being both the shock absorbing elements and the mounting pad and fender which are called for by the claim. Those are separately claimed elements, and anticipation requires a separate element corresponding to each.

The Examiner is likewise mistaken in suggesting that the element she has labeled as a "lug" is a shock absorbing fender. That so-called "lug" is one of two pivotally mounted legs that can be swung down to elevate the back side of the keyboard section of the computer. There is no suggestion that those legs are intended to or even capable of performing a shock absorbing function.

Claim 9 depends from Claim 8 and further distinguishes in specifying that the mounting pad and the fender are formed integrally with the housing. Even if element 26 could be considered to be a mounting pad, it still would not be formed integrally with the housing. As noted above, it is part of a piece of sheet metal 30 that is attached to the housing. Likewise, even if the legs the Examiner calls lugs were shock absorbing elements, they are still not formed integrally with the housing. They are attached to it in a manner which permits them to move relative to the housing.

Claim 19 defines the invention as a shock-resistant enclosure comprising a housing to which a fragile element is rigidly mounted, a mounting pad which projects from the housing, and a shock absorbing fender spaced laterally from the mounting pad, with a gap between the fender and the mounting pad, for receiving impacts which would otherwise strike the mounting pad. Contrary to the Examiner's suggestion, Bridges does not disclose a shock-resistant enclosure having this structure.

Initially, as discussed above, Bridges does not teach a housing to which a fragile element is attached. Moreover, the element characterized by the Examiner as a mounting pad (element 26) is not a mounting pad. It is enclosed within the housing and does not project from it. Furthermore, as also discussed above, the element characterized by the Examiner as a shock absorbing fender (element 22) is not a shock absorbing element, but simply a cover for element 26. Without the elements set forth in the claim, Bridges does not anticipate, and the rejection is clearly erroneous.

Claim 20 depends from Claim 19 and further distinguishes in specifying that the housing is formed of a rigid material and that the mounting pad and the fender are formed integrally with the housing and of the same rigid material as the housing. Bridges does not meet this claim because the element characterized as a mounting pad (element 26) is not formed integrally with and of the same rigid material as the housing. As noted above, it is part of a sheet metal support member that is attached to the enclosure.

Claim 21 depends from Claim 19 and further specifies that the fender includes a lug which extends beyond a surface of the mounting pad for receiving impacts which might otherwise strike the surface of the pad. There is no fender with a lug of that nature in Bridges. As discussed above, the element characterized by the Examiner as a fender (element 22) is not a shock absorbing fender at all, but even if it were, it still does not have a lug as claimed.

Claim 23 depends from Claim 19 and further specifies that the mounting pad is generally circular and that the fender is generally C-shaped. The elements characterized by the Examiner as a mounting pad (element 26) and a fender (element 22) are elongated, not circular or C-shaped (Col. 3, lines 25 - 29), although Bridges does suggest that in other embodiments element 26 could have a circular profile. However, even if it were circular, it still would not be a mounting pad.

Claim 32 further distinguishes in specifying that some of the shock absorbing elements are shock absorbing fenders which extend around and are spaced from corner portions of the housing for receiving impacts that would otherwise strike the housing. Element 22 does not extend around corner portions of the housing, nor does the element labeled "lug" by the Examiner. Moreover, the element labeled "lug" is not spaced from the corner portion to which it is attached.

Claim 33 depends from Claim 32 and further distinguishes in specifying that the fenders are formed integrally with the housing and of the same rigid material as the housing. The element labeled "lug" is not formed integrally with the housing. It is a separate piece that is attached to the housing in a manner permitting it to swing into and out of position to elevate the back of the keyboard. Moreover, there is no suggestion in Bridges that the "lug" is formed of the same material as the housing or enclosure.

Claim 34 also depends from Claim 32 and further specifies that the housing and the fenders are fabricated of a plastic material. Bridges is silent as to the material of which the "lugs" characterized by the Examiner as fenders are made, and it certainly does not say they are made of a plastic material.

Claim 35 likewise depends from Claim 32 and is directed to patentable subject matter the same reasons as its parent claim. In addition, it specifies that the fenders include lugs which extend beyond a side of the housing bounded by the corner portions.

Claims 10 - 12, 14, 17, and 18

Claim 10 defines the invention as a shock-resistant enclosure comprising a housing having base and cover sections, and a combined sealing gasket and shock absorbing structure formed integrally of an elastomeric material with a generally planar sealing portion disposed between the base and cover sections of the housing and a plurality of discrete shock absorbing elements extending outwardly from the sealing portion and

projecting from different sides of the housing, with at least one of the elements projecting from the housing in a direction substantially perpendicular to the plane of the sealing portion.

In rejecting this claim as being anticipated by Berberich et al., the Examiner is improperly combining elements from two different embodiments in Berberich et al., which is not a proper basis for an anticipation rejection. In that regard, it will be noted that gasket/bumper 40 is found in the embodiment of Figure 1 and that elements 80, 86 are found in the embodiment of Figure 10. Although the reference suggests that elements 80 could also be included in the embodiment of Figure 1, it does not show or describe how that might be done, and there is no suggestion in the reference of using elements 86 in the embodiment of Figure 1. Moreover, even if these various elements were found in the same embodiment, they would still not be formed integrally as specified by Claim 10.

Claims 11 - 12, 14, 17, and 18 depend from Claim 10 and are directed to patentable subject matter for the same reasons as their parent claim. In addition, they call for additional features which are not found in the reference.

Claim 11, for example, specifies that the shock absorbing elements are connected to the sealing portion by runners which are embedded in the walls of the housing. In suggesting that elements 86, 42, and 80 are connected together by runners 44, 46', the Examiner has once again badly mischaracterized what is actually shown in the reference. Element 44 is the portion of the bumper/seal that does the sealing. It cannot be both the sealing portion and the runners called for by the claim. Element 46' is a so-called locking tab that prevents the bumper/seal from being dislodged from the housing, and neither element 44 nor element 46' connects any of the so-called shock absorbing elements (86, 42, 80) to the sealing portion.

Claim 12 depends from Claim 11 and further specifies that the runners are embedded in recesses near the corners of the housing and held in place by cornerpieces retained by fasteners that also hold the base and cover sections of the housing together. Once again, contrary to the Examiner's suggestion, the so-called runners 44, 46' are not embedded in recesses near the corners of the housing, nor are they held in place by cornerpieces retained by fasteners that also hold the base and cover sections of the housing together. Element 44 is positioned between the two sections of the enclosure, and element 46' is inside the enclosure. Neither is embedded in anything, and the Examiner has failed to identify the elements she considers to be the cornerpieces and the fasteners.

Claim 14 further distinguishes in specifying that the shock absorbing elements are tapered and decrease in cross-sectional area away from the housing. Contrary to

the Examiner's suggestion, the rounded cornerpieces 86 shown in Berberich et al. are not tapered, and they do not decrease in cross-sectional area away from the housing.

Claim 17 further distinguishes in calling for a mounting pad which projects from the housing, and a shock absorbing fender spaced laterally from the mounting pad. Contrary to the Examiner's suggestion, elements 80 are not mounting pads. They are elastomeric bumpers which are intended to prevent damage to the disk drive in the event of a flat drop. They do not mount the drive to anything.

Claim 18 depends from Claim 17 and further specifies that the mounting pad and the fender are formed integrally with the housing. The bumpers 80 and end caps 86 characterized by the Examiner as mounting pads and fenders are not formed integrally with the housing. Bumpers 80 are pivotally attached, and end caps 86 appear to be adhesively attached.

Claims 24 and 25

Claim 24 defines the invention as a shock-resistant enclosure, comprising a housing to which a fragile element is rigidly mounted, and a plurality of leaf springs formed integrally with and extending outwardly from the housing for receiving impacts that would otherwise strike the housing. Contrary to the Examiner's suggestion, this structure is not found in Lelong et al.

Lelong et al. pertains to a hard disk drive cage having "keepers" or doors 21, 22 with leaf springs 38 that bear inwardly against the drive rails to hold the drives in place when the keepers are in their closed positions. In suggesting (incorrectly) that the hard disk drive is rigidly mounted to cage 10, the Examiner has apparently overlooked grommets 18 which are positioned between the hard drive and the cage in order to minimize any transmission of vibrations between the two (Paragraph 0060).

Moreover, leaf springs 38 do not extend from the cage for receiving impacts that would otherwise strike the cage, and having them do so would prevent them from performing their stated function of bearing against stop flanges 39, 40 of the drive rails 16, 17 to hold the drives in place.

Without either a housing to which a fragile element is rigidly mounted or leaf springs that extend outwardly from a housing for receiving impacts that would otherwise strike the housing, Lelong et al. does not anticipate, and the rejection is clearly erroneous.

Claim 25 depends from Claim 24 and further distinguishes over Lelong et al. in specifying that the leaf springs overlie one side of the housing.

Obviousness Rejections

Claim 2

Claim 2 depends from Claim 1 and further specifies that some of the shock absorbing elements are fabricated of an elastomeric material affixed to the housing.

In rejecting this claim, the Examiner cites Bridges as teaching basic inventive concept and Berberich et al. as teaching resilient shock absorbers that are made from elastomeric material. However, combining the teachings of Bridges and Berberich et al. will not produce the invention defined by Claim 2 because the combined teachings would still be lacking all of the elements discussed above in connection with the rejection of Claim 1.

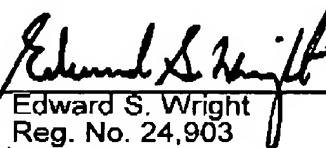
Claim 22

Claim 22 depends from Claim 19 and further and distinguishes over Bridges for the same reasons as its parent claim. In addition, it specifies that the housing, the mounting pad, and the fender are fabricated of a plastic material. As the Examiner has acknowledged, Bridges does not teach making the element characterized by her as a mounting pad (element 26) of plastic, and it actually teaches away from doing so. In that regard, it will be noted that the so-called "mounting pad" is part of a support member 30 that is attached to the plastic enclosure, and Bridges specifically says the support member is typically made of a metallic material such as sheet metal using a process such as metal stamping and forming (Col. 3, lines 17 - 19). There is no way of knowing if that element would deflect in the desired manner to absorb impacts if it were made of plastic, and there is no basis whatsoever for the Examiner's suggestion that the substitution of plastic for metal would have a predictable result.

SUMMARY AND CONCLUSION

It is respectfully submitted that the rejections which the Examiner has made cannot be sustained and that the action of the Examiner should be reversed.

Respectfully submitted,



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CLAIMS APPENDIX
The Claims on Appeal

1. A shock-resistant enclosure, comprising a housing formed of rigid material to which a fragile element is rigidly mounted, and a plurality of discrete shock absorbing elements projecting outwardly in different directions from the housing for receiving impacts which would otherwise strike the housing from the outside, with at least some of the shock absorbing elements being formed integrally with the housing and of the same rigid material as the housing.
2. The shock-resistant enclosure of Claim 1 wherein some of the shock absorbing elements are fabricated of an elastomeric material affixed to the housing.
5. The shock-resistant enclosure of Claim 1 wherein some of the shock absorbing elements are tapered and decrease in cross-sectional area away from the housing.
7. The shock-resistant enclosure of Claim 1 wherein at least some of the shock absorbing elements extend beyond a mounting surface of the housing and are adapted to deflect so as not to prevent the mounting surface from making direct contact with a surface on which the enclosure is installed.
8. The shock-resistant enclosure of Claim 1 further including a mounting pad which projects from the housing, and a shock absorbing fender spaced laterally from the mounting pad, with a gap between the mounting pad and the fender.
9. The shock-resistant enclosure of Claim 8 wherein the mounting pad and the fender are formed integrally with the housing.
10. A shock-resistant enclosure, comprising a housing having base and cover sections, and a combined sealing gasket and shock absorbing structure formed integrally of an elastomeric material with a generally planar sealing portion disposed between the base and cover sections of the housing and a plurality of discrete shock absorbing elements extending outwardly from the sealing portion and projecting from different sides of the housing, with at least one of the elements projecting from the housing in a direction substantially perpendicular to the plane of the sealing portion.
11. The shock-resistant enclosure of Claim 10 wherein the shock absorbing elements are connected to the sealing portion by runners which are embedded in the walls of the housing.
12. The shock-resistant enclosure of Claim 11 wherein the runners are embedded in recesses near the corners of the housing and held in place by cornerpieces retained by fasteners that also hold the base and cover sections of the housing together.
14. The shock-resistant enclosure of Claim 10 wherein the shock absorbing elements are tapered and decrease in cross-sectional area away from the housing.
17. The shock-resistant enclosure of Claim 10 further including a mounting pad which projects from the housing, and a shock absorbing fender spaced laterally from the mounting pad.

18. The shock-resistant enclosure of Claim 17 wherein the mounting pad and the fender are formed integrally with the housing.

19. A shock-resistant enclosure, comprising a housing to which a fragile element is rigidly mounted, a mounting pad which projects from the housing, and a shock absorbing fender spaced laterally from the mounting pad, with a gap between the fender and the mounting pad, for receiving impacts which would otherwise strike the mounting pad.

20. The shock-resistant enclosure of Claim 19 wherein the housing is formed of a rigid material, and the mounting pad and the fender are formed integrally with the housing and of the same rigid material as the housing.

21. The shock-absorbing enclosure of Claim 19 wherein the fender includes a lug which extends beyond a surface of the mounting pad for receiving impacts which might otherwise strike the surface of the pad.

22. The shock-resistant enclosure of Claim 19 wherein the housing, the mounting pad, and the fender are fabricated of a plastic material.

23. The shock-resistant enclosure of Claim 19 wherein the mounting pad is generally circular, and the fender is generally C-shaped.

24. A shock-resistant enclosure, comprising a housing to which a fragile element is rigidly mounted, and a plurality of leaf springs formed integrally with and extending outwardly from the housing for receiving impacts that would otherwise strike the housing.

25. The shock-resistant enclosure of Claim 24 wherein the leaf springs overlie one side of the housing.

32. The shock-resistant enclosure of Claim 1 wherein at least some of the shock absorbing elements are shock absorbing fenders which extend around and are spaced from corner portions of the housing for receiving impacts that would otherwise strike the housing.

33. The shock-resistant enclosure of Claim 32 wherein the fenders are formed integrally with the housing and of the same rigid material as the housing.

34. The shock-resistant enclosure of Claim 32 wherein the housing and the fenders are fabricated of a plastic material.

35. The shock-resistant enclosure of Claim 32 wherein the fenders include lugs which extend beyond a side of the housing bounded by the corner portions.

EVIDENCE APPENDIX
Copies of Evidence Submitted

None

DECISIONS APPENDIX
Copies of Decisions in Related Appeals and Interferences

None